


# Parks Division Policy Manual



## AmeriCorps Program Background Check & Exclusion Policy

Division Administrator Approval	Effective Date	Review Date
	04/01/12	04/01/15

### **Parks Division Policy**

All AmeriCorps program members must be vetted for suitability by successfully passing a series of background checks including a National Sex Offender Public Registry Check (NSOPR), a statewide criminal history repository check of the state of residency and the state where the individual will work / serve, and, in some cases, a fingerprint-based FBI criminal history repository check to be eligible to participate in the program. Grant covered staff are also subject to the same series of criminal background checks.

### **Purpose**

Criminal history background checks serve to protect the health, safety and welfare of vulnerable populations including children under 18, persons age 60 or older, or individuals with disabilities that are being served by AmeriCorps program participants. This policy ensures compliance with National and Community Service background check requirements.

### **Procedures and Standards**

#### **AmeriCorps Members:**

All AmeriCorps members will be subject to a National Sex Offender Public Registry check (NSOPR) and a statewide criminal history repository check of, at the minimum, the state of residency and the state where the individual will work / serve. Because Montana State Parks AmeriCorps members may have unaccompanied recurring access to vulnerable populations, those members will also be subject to a fingerprint-based FBI criminal history repository check in order to become eligible to participate in the program.

Favorable results from the NSOPR and statewide criminal history checks must be received prior to an AmeriCorps member beginning their term of service. Members must not have unaccompanied access to vulnerable populations until favorable results from the fingerprint-based FBI criminal history repository check are received.

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Those members serving consecutive terms with Montana State Parks AmeriCorps whose break in service is more than 30 days will again be subject to the same series of background checks in order to begin any subsequent terms.

### **Grant Covered Staff:**

Staff members whose positions or salaries are supported in part or in whole by a Corporation for National and Community Service grant either as the Corporation share or the grantee share must also pass background checks.

Staff with a leave of absence or break in service of more than 30 days must undergo repeat background checks based upon return.

### **Statutory Authority**

- The National Child Protection Act of 1993 (NCPA), Public Law (Pub. L.) 103-209, as amended by the Volunteers for Children Act (VCA)
- Pub. L. 105-251 (Sections 221 and 222 of Crime Identification Technology Act of 1998), codified at 42 United States Code (U.S.C.) Sections 5119a and 5119c - authorizes a state and national criminal history background check to determine the fitness of an employee, or volunteer, or a person with unsupervised access to children, the elderly, or individuals with disabilities.
- 45 CFR Ch. XXV, Subpart B, Section 2540.200 – establishes requirements directly affecting the selection and treatment of participants.

### **Exclusion Criteria**

Montana State Parks AmeriCorps applicants shall be disqualified and prohibited from serving as a member if the person has been convicted in a court of law of the following criminal offenses. Staff will be prohibited from participating in the AmeriCorps program under the same criminal offenses. These criteria do not apply if criminal charges resulted in acquittal, Nolle Prose, or dismissal:

- 1) **All Sex Offense Convictions** - Regardless of the amount of time since offense. Examples include: child molestation, rape, sexual assault, sexual battery, sodomy, prostitution, solicitation of prostitution, etc.
- 2) **All Felony Violence Convictions** - regardless of the amount of time since offense. Examples include: murder, manslaughter, aggravated assault, kidnapping, robbery, burglary, use of a firearm in committing a crime, etc.
- 3) **All Felony Convictions** - other than those involving violence or sex offenses within the past 10 years. Examples include: drug offenses, larceny, embezzlement, fraud, child endangerment, etc.

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- 4) **All Misdemeanor Violence Convictions** - within the past 10 years. Examples include: simple assault, battery, domestic violence, hit & run, etc.
- 5) **Multiple (more than 1) Misdemeanor Drug & Alcohol Convictions** - within the past 10 years. Examples include: driving under the influence, drug possession, distribution or sale of drugs, drug paraphernalia possession, disorderly conduct, public intoxication, providing alcohol to a minor, open container in vehicle, etc.
- 6) **Any other Misdemeanor Convictions** - within the past 5 years that would be considered a potential danger or risk to vulnerable populations or is directly related to the specific functions of that member. Examples include: contributing to the delinquency of a minor, theft (if person is handling monies), criminal mischief, etc.

### **Pending Cases**

Anyone who has been charged for any of the disqualifying offenses or for cases pending in court should not be permitted to work unsupervised with children, the elderly, or individuals with disabilities until the official adjudication of the case.

### **Definitions**

**Felony** - a serious crime punishable by death or imprisonment in excess of one year.

**Misdemeanor** - a crime that is typically punishable by imprisonment of one year or less. Individual states may differ in this definition, using other categories as seriousness or context.

**Sex Offense** – a statutory offense wherein someone knowingly causes another person to engage in an unwanted sexual act by force or threat.

**Vulnerable Populations** – children under 18 persons age 60 or older, or individuals with disabilities.

**Recurring Access** – the ability on more than one occasion to approach, observe, or communicate with an individual, though physical proximity or other means, including but not limited to electronic or telephonic communication (45 CFR 2510.20). Access that is not a regular, scheduled, or anticipated component of an individual's position description is considered "episodic" and is not considered recurring.

**Grant Covered Individual** – any individual who receives a Corporation grant-funded living allowance, stipend, national service education award, or salary for participation in or employment by a program. This includes employees whose positions and salaries are supported in part or in whole by the Corporation grant, either as the Corporation share or the grantee share.

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**Unaccompanied** – not accompanied by (1) an authorized program representative who has previously been cleared for access to vulnerable populations, (2) a family member or legal guardian of the vulnerable individual, or (3) an individual authorized by the nature of his or her profession to have recurring access to the vulnerable individual, such as an education or medical professional.

### Criminal History Background Checks - Process and Chain of Custody

<b>Program Coordinator</b> sends out release form (see attached)	<b>Applicants and Site supervisors</b> sign and return releases to the <b>Program Coordinator</b> ; obtain fingerprint cards if applicable	<b>Program Manager</b> initiates <u>NSOPR</u> and <u>state checks</u> ; <b>MT DOJ</b> runs <u>fingerprint checks</u> (received via <b>program coordinator</b> )	<i>Applicants—<b>Program Manager</b></i> receives results of <u>all checks</u>  <i>Staff—<b>HR</b></i> receives results of <u>NSOPR/ state checks</u> ; <b>Assistant Administrator</b> receives results of <u>fingerprint checks</u>	<i>Applicants—<b>Program Manager</b></i> fills out determination form* and shreds or files results  <i>Staff—<b>HR</b></i> fills out determination form and files results. <b>Assistant administrator</b> fills out determination form and shreds results.	<b>Program Coordinator</b> files determination forms.
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\*The determination form will indicate a pass / fail for each of the background checks conducted, based on the exclusion criteria described in this policy. Members and staff must receive a passing result on the National Sex Offender Registry Check and the State Registry Check, if applicable, in order to qualify for participation in the program. Members and staff must receive a passing result on the FBI fingerprint check in order to have recurring access to vulnerable populations.